



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

April 5, 2004

Tip Harwood
Coalition for Water
P.O. Box 53
Arco, ID 83213

RECEIVED

APR 08 2004

Department of Water Resources
Eastern Region

Dear Mr. Harwood:

The Director of the Idaho Department of Water Resources (IDWR) received your letter dated March 26, 2004, which requested comments on several issues related to water management in Water District 34. The Director has referred this letter to the Water Distribution Section for response.

You suggested in your letter that water management might be improved if the Water District employed additional ditch riders. As you stated, this could be funded through an increase in the Water District's assessments to water users. Because water district budgets are adopted by a vote of the water users at the annual meeting, this would not be an option until next year. If you would like to pursue this option for future years, you need to request that the Watermaster or Water District Advisory Board add the additional ditch riders to the proposed budget prior to the annual meeting, or make a motion to amend the budget during the annual meeting. The addition to the budget would be subject to approval by a vote of the water users. IDWR has discussed this same issue with the Water District Advisory Board in recent years and has encouraged budgeting for additional ditch riders. Please note that in 2003 the Water District funded additional ditch rider positions, but was not able to find individuals to fill the positions.

You stated that you witnessed excessive water being delivered as stockwater and that there was significant spreading and wasting of water on pastures and fields in several areas. Neither IDWR nor the Watermaster can effectively address these complaints unless you file a complaint stating the specific location of the alleged offense while it is occurring. In the future, if you believe you are witnessing excessive delivery of water, please contact the Watermaster with more specific information. IDWR has advised the Watermaster of the need to increase monitoring of winter stockwater diversions. IDWR provided written guidance to Water District 34 regarding delivery of winter stockwater on November 17, 2003. A copy of this correspondence is attached for your reference.

You also stated it is your opinion that recharge of the aquifer is much more important than delivering stockwater to a few ranches, and that you believe other water users should water stock from wells or haul water to their stock during short water years. While IDWR appreciates the importance of recharge to the aquifer, Idaho law and the

prior appropriation system do not provide any legal grounds for curtailing senior surface water rights to provide water for recharging an aquifer used by junior groundwater rights. Please note also that if other water users began using wells rather than surface water to supply stockwater, that would remove water from the aquifer and generally counteract the recharge received from undiverted river flows.

You mentioned the plight of many well owners, who have had to deepen their wells at significant cost. This is an unfortunate effect of drought conditions, and has also occurred in other areas of Idaho. During times of shortage, Idaho law and the prior appropriation system protects the rights of senior water users, even though this may cause junior water users to suffer a larger proportion of the costs and inconveniences of drought conditions.

Although the Watermaster cannot curtail valid senior water rights in order to provide water to recharge the aquifer, the Watermaster is responsible for regulating diversions so that water diverted does not exceed the rate authorized by these water rights. IDWR staff discussed this issue with the Watermaster on April 1, 2004 and reiterated your concerns. The Watermaster stated that he is currently monitoring stockwater diversions above Mackay Reservoir, and is overseeing stockwater diversions below Mackay Reservoir that are being adjusted by the Big Lost River Irrigation District.

If you have additional questions regarding these issues, please contact me at 208-327-7864.

Respectfully,



Tim Luke
Water Distribution Section Manager

Attachment

cc w/o attachment: Bob Duke, Watermaster, Water District 34
IDWR Eastern Region



State of Idaho

DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

November 17, 2003

Robert Duke, Watermaster
Water District 34
P.O. Box 53
Mackay, ID 83251

Dear Mr. Duke:

As you have requested, this letter is intended to provide written documentation of our telephone discussion on October 9, 2003 regarding the delivery of winter stockwater in Water District 34. As we discussed, a memorandum providing additional detail on the basis for these directions, is attached for your reference.

As you noted, a number of water rights within Water District 34 were decreed with the comment, "The appropriator is entitled to the quantity of water described for stockwater purposes at a point of measurement where the delivery ditch enters the place of use described." For water rights decreed with this comment, the flow rate delivered at the diversion heading may exceed the stockwater flow rate if necessary to supply the stockwater flow rate where the delivery ditch enters the place of use described by the water right. However, water delivered in excess of the stockwater flow rate must not result in unreasonable waste of water, must be necessary to compensate for conveyance loss in the ditch, and may not be stored, used to increase soil moisture, or used for any type of beneficial use. Further, the flow rate delivered at the heading may not exceed the total flow rate of the water right.

For water rights that provide for winter stockwater, but do not include the comment referenced in the paragraph above, the flow rate at the diversion heading must be restricted to the winter stockwater flow rate, regardless of conveyance losses. Stockwater may not be delivered at points of diversion or places of use that are not authorized by a water right that specifies winter stockwater as a use. Incidental stockwater use is only allowed during the irrigation season of use.

As with irrigation water, stockwater may only be delivered when the water right is in priority. For stockwater rights below Mackay Reservoir, the general provisions define the minimum winter release from Mackay Reservoir. Stockwater rights below the reservoir may be called for and delivered if it does not interfere with storage in Mackay Reservoir by requiring a release of water in excess of the minimum release required at the 2b gauge, or the actual release of water, whichever is greater. A water right holder calling for delivery of winter stockwater must have access to a point of diversion and delivery system to convey the right to the place of use. If the headgate and delivery system are controlled by an entity other than the water user, the watermaster will only

MEMORANDUM

TO: Tim Luke and Jennifer Berkey
Water Distribution, IDWR

FROM: Susan Hamlin Nygard, *shn*
Deputy Attorney General, IDWR

DATE: October 15, 2003

SUBJECT: Winter Stock Water Delivery in Basin 34

You have requested a memorandum regarding delivery of stock water in Basin 34 during the wintertime. The watermaster has received a number of inquiries on how the winter stock water will be handled. The question you have posed to me is how much water can be delivered to get the .02 cfs of stock water to the property.

The following quantity remark is included in most partial decrees for stock water: "The appropriator is entitled to the quantity of water described for stock water purposes at a point of measurement where the delivery ditch enters the place of use described." The explanatory material for the stock water right may describe the delivery ditch and the number of head of cattle. If the stock water right is part of an irrigation right, the water right includes a total diversion rate limitation for the water use, which limits the delivery of the stock water. In other words, to get the water to the point of measurement during the non-irrigation season the amount diverted cannot exceed the total diversion rate of the water right. Also implied with the rights and confirmed by IDWR Rules for Distribution is that the delivery of the stock water during the non-irrigation season cannot constitute waste.

The general provisions for Basin 34, as decreed by the SRBA court, address winter stock water issues. General Provision 2, *2-B Gage and Stock Watering During Non-Irrigation Season*, states the following:

During the time period from November 1 of each year to the beginning of the next irrigation season (the "non-irrigation" period), all or a portion of the water of the Big Lost River flowing into Mackay Reservoir may be diverted, according to priority, for storage under water right numbers 34-00012 and 34-10873 provided the natural flow at the 2-B gage is not less than fifty cubic feet per second. During the non-irrigation period, natural flow water rights downstream of Mackay Dam and senior in priority to water rights numbers 34-00012 and 34-10873 may be diverted for domestic and livestock uses under water rights authorized for these purposes.

The clause, "according to priority" implies that wintertime stock water uses upstream from the Mackay Reservoir may divert if they are senior in time to the storage

Memorandum
October 15, 2003
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In sum, winter stock water rights upstream from the Mackay Reservoir may divert if their partial decree provides for such use and if they are senior in time to the BLRID storage rights 34-00012 and 34-10873. Senior rights downstream from Mackay Dam may also divert for non-irrigation season stock water, if their partial decree provides for such use, up to the amount of the minimum release required at the 2-B Gage or the actual release, whichever is greater.

If the right includes the remark that allows delivery to the point of measurement, the amount diverted cannot exceed the total diversion rate of the water right and delivery of that water cannot constitute unreasonable waste as determined by the Director. Finally, if there is no remark referencing delivery to the point of measurement then the right is limited to the diversion rate for stock water measured at the point of diversion.

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MAR 29 2004

Coalition for Water
P. O. Box 53
Arco, ID 83213
(208-554-2109)

Department of Water Resources

March 26, 2004

Director Karl Dreher
IDWR
1301 N. Orchard
Boise, ID 83706

Dear Mr. Dreher

I am writing this letter to ask you to comment on a few items concerning the management of the water within Water Basin 34. This of course is very important to membership of the "Coalition for Water". We are of the opinion that the water is not managed fairly and equitably within this Basin. Perhaps one solution would be to employ two additional Ditch Riders. One to cover Antelope, Alder Creek and Pass Creek. The second to cover the water deliveries above the Reservoir. This could probably be funded through an increase of the Water-Master tax accessed to the water users.

After the end of the irrigation season of 2003, I personally witnessed excessive water being delivered as stock water. There was significant spreading and wasting of water on pastures and fields up Antelope, above the Reservoir, and from Lesley toward the Reservoir.

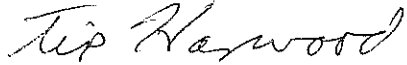
I asked to come in and talk to Water-Master Bob Duke about this situation and he invited me to do so. I shared with him my concern and frustration over these practices, and let him know that we have every right to expect him to manage the water according to the Idaho Water Code. That's all we ask IDWR and the Water-Master to guarantee us they will do.

We have just went through another Fall and Winter where there has been absolutely no water down the Big Lost River to help recharge the Aquifer in the Lower Valley. It is my opinion that the recharge of our aquifer is much more important than delivering stock water to a few ranches. If we in the lower part of the Basin have to water stock from wells or haul water to the stock, I believe the other stockmen could do the same in these short water years. Our farm lies about 1 mile above the Moore Diversion, and 3 to 4 miles below Lesley, so we have first hand daily access to check the river bed.

The aquifer continues to lower and wells that have never been dry continue to go dry. These wells have to be drilled deeper or be replaced altogether at a great cost to the affected parties. It was disturbing to hear some of the fellows, attending the Water-Master Election meeting, more concerned about calling a futile call, to their benefit, than anything thing else.

Thank you for your interest in our situation over here. It is our hope that we can work with IDWR and the Water-Master in bringing about so many needed changes in the way water is managed in this Basin.

Thanking you for lending me your ear,

A handwritten signature in cursive script that reads "Tip Harwood".

Tip Harwood President
Coalition for Water Within Water Basin 34